

VIRGINIA: AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF TAZEVELL COUNTY, VIRGINIA HELD AT THE COUNTY ADMINISTRATION BUILDING, LOCATED AT 197 MAIN STREET, IN THE TOWN OF TAZEVELL, VIRGINIA, AFTER A PUBLIC HEARING WAS HELD, ON THE 1st DAY OF SEPTEMBER, 2026, THE FOLLOWING ORDINANCE WAS ADOPTED, UPON A MOTION AND SECOND:

Ordinance No.: 26-09-06

Date: September 1, 2026

AN ORDINANCE ESTABLISHING A PROCESS FOR CONSIDERING EXEMPTION REQUESTS FROM THE EXPANDED POLYSTYRENE FOOD SERVICE CONTAINER BAN PURSUANT TO VIRGINIA CODE ANN. § 10.1-1424.3.

WHEREAS, the Tazewell County Board of Supervisors held a public hearing to receive input and public comment concerning the proposed ordinance on September 1, 2026 at 6:40 p.m.;

WHEREAS, the General Assembly of Virginia has enacted Virginia Code Ann. § 10.1-1424.3, which prohibits food vendors from dispensing prepared food to customers in expanded polystyrene food service containers;

WHEREAS, Virginia Code § 10.1-1424.3(B) authorizes localities to grant exemptions from the expanded polystyrene ban to food vendors that demonstrate that the said vendor has no reasonable alternative to the expanded polystyrene food service containers in use and compliance with any such ban would cause a significant economic hardship;

WHEREAS, the Tazewell County Board of Supervisors is vested with authority to adopt measures to secure and promote the health, safety, and general welfare of county inhabitants that are not inconsistent with the general laws of the Commonwealth;

WHEREAS, the Tazewell County Board of Supervisors has the same powers and authority as the councils of cities and towns by virtue of the Constitution of the Commonwealth of Virginia and acts of the General Assembly;

WHEREAS, the Board of Supervisors deems it necessary and appropriate to establish a process for considering exemption requests from food vendors seeking relief from the requirements of Virginia Code § 10.1-1424.3(A);

WHEREAS, the establishment of clear standards and procedures for evaluating exemption requests will ensure fair and consistent treatment of food vendors while promoting environmental objectives;

NOW, THEREFORE, BE IT ORDAINED AND RECORDED by the Tazewell County Board of Supervisors as follows:

[NEW ORDINANCE BELOW]

Tazewell County Code of Ordinances

Chapter 17 – Solid Waste

Article VI. – Polystyrene Food Service Container Ban Exemption.

Sec. 17-174. Title. An Ordinance Establishing A Process For Considering Exemption Requests From The Expanded Polystyrene Food Service Container Ban Pursuant to Virginia Code Ann. § 10.1-1424.3.

Sec. 17-175. Exemption Application from Expanded Polystyrene Food Service Container Ban.

- A. **Effective Date.** This Ordinance shall be in effect as of the date and time of its adoption by the Board of Supervisors of Tazewell County, Virginia.
- B. **Purpose and Authority.** This section establishes procedures and standards for the Tazewell County Board of Supervisors to consider exemption requests

from food vendors seeking relief from the prohibition on dispensing prepared food in expanded polystyrene food service containers as set forth in Virginia Code § 10.1-1424.3(A). This ordinance is enacted pursuant to the authority granted in Virginia Code § 10.1-1424.3(B).

C. **Definitions.** For purposes of this section, the following terms shall have the meanings ascribed to them:

1. "Expanded polystyrene food service container" means a container made from blown polystyrene (extruded foam polystyrene) and expanded or extruded foam that is not wholly encapsulated or encased within a more durable material and that is used for selling or providing prepared food.
2. "Food vendor" means a restaurant or any retail food establishment that provides prepared food for public consumption on or off its premises, and includes but is not limited to restaurants, delicatessens, coffee shops, convenience stores, grocery stores, and food trucks.
3. "Prepared food" means food or beverages prepared for consumption on the food vendor's premises, using any cooking or food preparation technique, and that are served to or purchased by a customer in a ready-to-consume state. "Prepared food" does not include any raw, uncooked meat product or raw, uncooked eggs.
4. "Undue economic hardship" means a situation in which (i) a food vendor has no reasonable alternative to the expanded polystyrene food service containers in use by that food vendor and (ii) compliance with Virginia Code § 10.1-1424.3(A) would cause significant economic hardship to that food vendor.

D. **Eligibility to Apply.** Any food vendor located within Tazewell County may request an exemption from the provisions of Virginia Code § 10.1-1424.3(A).

E. **Application Requirements.** A vendor must supply an application in the following manner:

1. A food vendor seeking an exemption shall submit a written application to the County Attorney's Office of Tazewell County, Virginia on a form provided by the County. The Form is attached hereto as Exhibit 1 and incorporated herein by reference as if set forth verbatim. The application shall include:
 - a. The name, business address, telephone number, and email address of the food vendor;
 - b. The name and contact information for the owner or authorized representative of the food vendor;
 - c. A description of the food vendor's business operations, including the type of prepared food sold and annual gross revenues;

- d. A detailed statement explaining why the food vendor has no reasonable alternative to expanded polystyrene food service containers currently in use, including:
 - i. A description of the specific expanded polystyrene food service containers currently used;
 - ii. Documentation of efforts made to identify and obtain alternative containers;
 - iii. An explanation of why each identified alternative is not reasonable for the food vendor's operations;
 - e. A detailed financial analysis demonstrating that compliance with Virginia Code § 10.1-1424.3(A) would cause significant economic hardship to the food vendor, including:
 - i. Current costs associated with expanded polystyrene food service containers;
 - ii. Projected costs of alternative containers;
 - iii. Impact of increased costs on the food vendor's financial condition, including profit margins, cash flow, and ability to remain in business;
 - iv. Supporting financial documentation, including tax returns, profit and loss statements, balance sheets, and vendor quotes for alternative containers covering at least the most recent period of operations;
 - f. Any other information the food vendor believes is relevant to the exemption request; and
 - g. A signed certification by the owner or authorized representative that all information provided is true and accurate to the best of their knowledge.
2. The application shall be accompanied by an application fee of \$25.00 to defray the County's administrative costs in processing the exemption request.

Sec. 17-176. Review Procedure.

- A. Upon receipt of a complete application, the County Attorney's Office, inclusive of the County Attorney and any Staff or designee, shall review the application for completeness and may request additional information from the applicant within fourteen (14) days of receipt.
- B. The County Attorney shall prepare a written report evaluating the application and making a recommendation to the Board of Supervisors within twenty-one (21) days of receiving a complete application.

- C. Upon completion of the aforementioned written report, the County Attorney shall request the Board of Supervisors to place the exemption request on the agenda of a regular or special meeting.
- D. The Board of Supervisors shall provide notice of its consideration of the exemption request by posting notice on the County's website at least seven days prior to the meeting.
- E. The food vendor or its authorized representative may appear before the Board of Supervisors to present information in support of the exemption request.

Sec. 17-177. Standards for Consideration.

The Board of Supervisors may grant an exemption only if the food vendor demonstrates to the satisfaction of the Board that compliance with Virginia Code § 10.1-1424.3(A) would impose an undue economic hardship on the food vendor. In evaluating whether an undue economic hardship exists, the Board shall consider:

- A. Whether the food vendor has no reasonable alternative to the expanded polystyrene food service containers in use, including consideration of:
 - 1. The availability of alternative containers in the marketplace;
 - 2. Whether alternative containers are suitable for the type of prepared food sold by the food vendor, considering factors such as temperature retention, durability, and prevention of leakage or spillage;
 - 3. Whether the food vendor has made good-faith efforts to identify and obtain alternative containers;
 - 4. Whether modifications to the food vendor's operations or menu could eliminate the need for expanded polystyrene food service containers;
 - 5. Whether compliance with Virginia Code § 10.1-1424.3(A) would cause significant economic hardship to the food vendor, including consideration of:
 - 6. The incremental cost of alternative containers compared to expanded polystyrene food service containers;
 - 7. The food vendor's current financial condition, including profitability, cash flow, and debt obligations;
 - 8. The impact of increased container costs on the food vendor's ability to remain in business or maintain current employment levels;
 - 9. The food vendor's ability to absorb increased costs or pass them on to customers without significant loss of business;
 - 10. Any unique circumstances affecting the food vendor's operations or financial condition; and,
 - 11. Any other factors the Board deems relevant to determining whether an undue economic hardship exists.

Sec. 17-178. Decision.

- A. The Board of Supervisors shall, by resolution, grant or deny the exemption request at the meeting at which the request is considered or at a subsequent meeting within thirty (30) days.
- B. The decision shall be based on the standards set forth in subsection F of this section and the statutory definition of undue economic hardship in Virginia Code § 10.1-1424.3(B).
- C. The Board's resolution shall include written findings supporting its decision, including specific findings as to whether the food vendor has demonstrated:
 - 1. That the food vendor has no reasonable alternative to the expanded polystyrene food service containers in use; and
 - 2. That compliance with Virginia Code § 10.1-1424.3(A) would cause significant economic hardship to the food vendor.
- D. The County Attorney's Office shall provide written notice of the Board's decision to the food vendor within seven (7) days of the Board's action.

Sec. 17-179. Duration and Renewal.

- A. Any exemption granted under this section shall be for a period not to exceed one year from the date of the exemption.
- B. A food vendor granted an exemption may reapply to the Board of Supervisors before the expiration of the exemption. The reapplication shall follow the same procedures and meet the same standards as an initial application.
- C. The Board of Supervisors may grant an additional exemption not to exceed one year for each reapplication if the food vendor demonstrates a continuing undue economic hardship at the time of reapplication to the satisfaction of the Board.
- D. There is no limit on the number of times a food vendor may reapply for an exemption, provided that each application demonstrates continuing undue economic hardship.

Sec. 17-180. Conditions.

The Board of Supervisors may, but is not required to, impose reasonable conditions on any exemption granted under this section, including but not limited to:

- A. Requiring the food vendor to continue efforts to identify and transition to alternative containers;

- B. Requiring the food vendor to submit periodic progress reports on efforts to identify alternatives or reduce reliance on expanded polystyrene food service containers;
- C. Any other condition the Board deems appropriate to further the purposes of Virginia Code § 10.1-1424.3 while addressing the food vendor's demonstrated hardship.

Failure to comply with any condition imposed by the Board shall be grounds for revocation of the exemption.

Sec. 17-181. Modification and Revocation.

- A. The Board of Supervisors may modify or revoke an exemption granted under this section at any time upon a finding that:
 - 1. The food vendor has failed to comply with any condition imposed on the exemption;
 - 2. The food vendor provided false or misleading information in its application;
 - 3. There has been a material change in circumstances such that the food vendor no longer faces an undue economic hardship; or
 - 4. Reasonable alternatives to expanded polystyrene food service containers have become available to the food vendor.
- B. Before modifying or revoking an exemption, the Board shall provide the food vendor with written notice of the proposed action and the grounds therefor, and shall provide the food vendor an opportunity to be heard at a meeting of the Board.
- C. Any modification or revocation shall be by resolution of the Board and shall include written findings supporting the action.

Sec. 17-182. Recordkeeping. The Tazewell County Attorney's Office shall maintain a record of all exemption applications, the Board's decisions, any conditions imposed, and any modifications or revocations. Records of exemption applications and decisions shall be public records subject to disclosure under the Virginia Freedom of Information Act, except for financial information, trade secrets, or other information that is exempt from disclosure under applicable law.

Sec. 17-183. Relationship to State Law.

- A. Nothing in this section shall be construed to exempt any food vendor from the requirements of Virginia Code § 10.1-1424.3(A) except to the extent an exemption is expressly granted by the Board of Supervisors pursuant to the authority in Virginia Code § 10.1-1424.3(B).

- B. Any exemption granted under this section applies only within Tazewell County and does not affect the food vendor's obligations under Virginia Code § 10.1-1424.3 in other localities.
- C. Any applicant under this ordinance, whether a person or entity, that violates any provision of this Ordinance, upon such finding of the circuit court, shall be assessed a civil penalty of \$50.00 for each day of such violation. Any civil penalty assessed pursuant to this section in a civil action brought by Tazewell County shall be paid to the Treasurer of Tazewell County, Virginia.

[END OF ORDINANCE]

It is so **ORDAINED AND RECORDED** this _____ day of September, 2026.

ATTEST:

Charles E. Presley, Jr.,
Chairman – Board of Supervisors

C. Eric Young
Tazewell County Administrator

RECORDED VOTE:

MEMBERS PRESENT:

MEMBERS ABSENT:

AYES:

NAYS:

ABSTENTIONS:
